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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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30184	7590	08/26/2004	EXAMINER	
MYERS & KAPLAN, INTELLECTUAL PROPERTY LAW, L.L.C. 1899 POWERS FERRY ROAD SUITE 310 ATLANTA, GA 30339			PASS, NATALIE	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 08/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/764,383	Applicant(s) SHAMOUN, SIMON	
	Examiner Natalie A. Pass	Art Unit 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/7/01 & 5/31/01</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the application filed 19 January 2001. Claims 1-40 are pending.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 32 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(A) Claim 32 recites, "wherein said means for inputting data is a stylus pad." It is not clear what Applicant means by "a stylus pad," as Applicant does not define a stylus pad in the specification. For the purpose of finding art, the Examiner is giving these limitations the broadest reasonable interpretation, namely wherein said means for inputting data is a stylus or pen or an input device used to write text or draw lines on a surface as input to a computer.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4, 8-10, 14, 16, 33-40 are rejected under 35 U.S.C. 102(b) as being as being anticipated by Mansfield et al, U.S. Patent Number 5, 819, 735.

(A) As per claim 1, Mansfield teaches a portable nutritional data device for reading a machine-readable indicia, comprising:

a portable data processing platform (Mansfield, see at least Abstract , Figure 1, Figure 3C, Figure 3D, Figure 3E, column 3, line 51 to column 5, line 46, column 6, lines 31-62);

means for inputting data (Mansfield, see at least Abstract , Figure 1, Figure 3C, Figure 3D, Figure 3E, column 3, line 51 to column 5, line 46, column 6, lines 31-62);

means for retrievably storing data (Mansfield, see at least Abstract , Figure 1, Figure 3C, Figure 3D, Figure 3E, column 3, line 51 to column 5, line 46, column 6, lines 31-62); and

means for displaying data, wherein the machine-readable indicia represents nutritional information (Mansfield, see at least Abstract , Figure 1, Figure 3C, Figure 3D, Figure 3E, column 3, line 51 to column 5, line 46, column 6, lines 31-62).

(B) As per claims 2-4, 8-10, 14, 16, Mansfield teaches a device as discussed in claim 1 above

wherein the machine-readable indicia is the commonly available Nutritional Facts Data (Mansfield, see at least Abstract, Figure 1, Figure 3C, Figure 3D, Figure 3E, column 3, line 51 to column 5, line 46, column 6, lines 31-62);

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wherein the machine-readable indicia is a preprinted bar code contained on a food package (Mansfield, see at least Abstract , Figure 1, Figure 3C, Figure 3D, Figure 3E, column 3, line 51 to column 5, line 46, column 6, lines 31-62);

wherein said means for inputting data is a bar code scanner used to read bar codes (reads on optical scanner capable of reading the machine-readable indicia) (Mansfield, see at least Abstract , Figure 1, Figure 3C, Figure 3D, Figure 3E, column 3, line 51 to column 5, line 46, column 6, lines 31-62);

wherein said means for displaying data is an LCD display (reads on screen) (Mansfield, Figure 1, Item 28, column 6, line 64 to column 7, line 10, column 7, lines 33-44);

wherein said means for displaying data is a printer (Mansfield, Abstract, column 10, lines 56-67);

wherein said means for retrievably storing data is a digital storage medium (Mansfield, see at least Abstract , Figure 1, Figure 3C, Figure 3D, Figure 3E, column 3, line 51 to column 5, line 46, column 6, lines 31-62);

wherein said means for retrievably storing data further comprises categorical data of recommended daily nutritional allowances (Mansfield; see at least column 8, lines 12-19); and

wherein said means for retrievably storing data further comprises nutritional data for fresh food (Mansfield; column 8, lines 41-56).

(C) Claim 33 differs from claim 1 in that it is a portable nutritional data device for reading a machine-readable indicia comprising an optical scanner and a user-selectable audible

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signal rather than a portable nutritional data device for reading a machine-readable indicia comprising a means for inputting data.

As per claim 33, Mansfield teaches a portable nutritional data device for reading a machine-readable indicia, comprising:

a portable data processing platform (Mansfield, see at least Abstract, Figure 1, Figure 3C, Figure 3D, Figure 3E, column 3, line 51 to column 5, line 46, column 6, lines 31-62);

a bar code scanner (reads on an optical scanner capable of reading the machine-readable indicia) (Mansfield, see at least Abstract, Figure 1, Figure 3C, Figure 3D, Figure 3E, column 3, line 51 to column 5, line 46, column 6, lines 31-62);

a digital storage medium having read-only-memory, random-access-memory and a data hard drive (Mansfield, see at least Abstract, Figure 1, Figure 3C, Figure 3D, Figure 3E, column 3, line 51 to column 5, line 46, column 6, lines 31-62);

a display (Mansfield, see at least Abstract, Figure 1, Figure 3C, Figure 3D, Figure 3E, column 3, line 51 to column 5, line 46, column 6, lines 31-62); and

a user-selectable audible signal (Mansfield; see at least Abstract, Figure 1, Item 30, column 6, lines 55-59, column 8, lines 60-67, column 9, lines 25-28),

wherein the machine-readable indicia is Nutritional Facts Data (Mansfield, see at least Abstract, Figure 1, Figure 3C, Figure 3D, Figure 3E, column 3, line 51 to column 5, line 46, column 6, lines 31-62).

(D) Claim 34 differs from claim 1 in that it is a method of portable nutritional monitoring rather than a portable nutritional data device for reading a machine-readable indicia.

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As per claim 34, Mansfield teaches a method of portable nutritional monitoring, comprising the steps of:

- a) scanning a machine-readable indicia, wherein said indicia indicates nutritional information (Mansfield, see at least Abstract , Figure 1, Figure 3C, Figure 3D, Figure 3E, column 3, line 51 to column 5, line 46, column 6, lines 31-62);
- b) storing said nutritional information in a digital medium (Mansfield, see at least Abstract , Figure 1, Figure 3C, Figure 3D, Figure 3E, column 3, line 51 to column 5, line 46, column 6, lines 31-62, column 11, line 41 to column 12, line 20);
- c) comparing said stored nutritional information with given user preferred data (Mansfield; column 9, lines 29-61, column 13, line 25 to column 14, line 23); and
- d) displaying said compared nutritional information to a user (Mansfield, see at least Abstract, Figure 1, Figure 3C, Figure 3D, Figure 3E, column 3, line 51 to column 5, line 46, column 6, lines 31-62, column 9, lines 29-61).

(E) As per claims 35-40, Mansfield teaches a method of portable nutritional monitoring as analyzed and discussed in claim 34 above

wherein said user preferred data is the United States Recommended Daily Allowance guidelines (Mansfield; see at least column 8, lines 12-19);

wherein said user preferred data is periodic user nutritional limitations (Mansfield; see at least column 8, lines 12-39);

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further comprising the step of categorizing said nutritional information (Mansfield; see at least Figure 3D, Abstract, column 3, line 50 to column 5, line 46, column 6, line 44 to column 7, line 10);

wherein said machine-readable indicia is the Nutritional Facts Data (Mansfield, see at least Abstract, Figure 1, Figure 3C, Figure 3D, Figure 3E, column 3, line 51 to column 5, line 46, column 6, lines 31-62);

wherein said machine-readable indicia is a bar code (Mansfield, see at least Abstract, Figure 1, Figure 3C, Figure 3D, Figure 3E, column 3, line 51 to column 5, line 46, column 6, lines 31-62); and

wherein said bar code is contained on a food packaging (Mansfield, see at least Abstract, column 3, line 51 to column 5, line 46, column 6, lines 31-62, column 11, line 40 to column 12, line 19).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5, 24, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mansfield et al, U.S. Patent Number 5, 819, 735 as applied to claim 1 above, and further in view of Shepley, U.S. Patent Number 6, 024, 281.

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(A) As per claim 5, Mansfield teaches a device as analyzed and discussed in claim 1 above.

Mansfield fails to explicitly disclose wherein said means for inputting data is a keypad.

However, the above features are well-known in the art, as evidenced by Shepley.

In particular, Shepley teaches a device wherein said means for inputting data is a keypad (Shepley, Figure 1, column 4, line 51 to column 5, line 19, column 5, lines 58-67).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Mansfield to include wherein said means for inputting data is a keypad, as taught by Shepley, with the motivations of providing a device for providing personalized nutrition information that includes other well known systems for data entry (Shepley; column 5, lines 58-67).

(B) As per claims 24, 29, Mansfield and Shepley teach a device as discussed above wherein said readable indicia is a readable symbol (Shepley, see at least Figure 3, Figure 4, column 7, lines 20-25, 46-55); and

wherein said portable data processing platform is a mobile communication device (Shepley; Figure 4, column 7, lines 1-19).

8. Claims 6-7, 11-13, 17, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mansfield et al, U.S. Patent Number 5, 819, 735 as applied to claim 1 above, and further in view of Brown, U.S. Patent Number 6, 618, 062.

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(A) As per claims 6-7, Mansfield teaches a device as analyzed and discussed in claim 1 above.

Mansfield fails to explicitly disclose wherein said portable data processing platform is a personal data assistant or handheld PC.

However, the above features are well-known in the art, as evidenced by Brown.

In particular, Brown teaches a device wherein said portable data processing platform is a personal data assistant or handheld PC (Brown, column 3, lines 23-26).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Mansfield to include wherein said portable data processing platform is a personal data assistant or handheld PC, as taught by Brown, with the motivations of providing a method for customers to easily attain a list of menu items which meet their ordering criteria and menu items which do not meet their ordering criteria and where food preferences for a particular customer are retrieved from a personal storage device, wherein the personal storage device is proffered from the particular customer (Brown; column 2, lines 8-40).

(B) As per claims 11-13, 17, 32 Mansfield and Brown teach a device as discussed above

wherein said means for retrievably storing data is read-only-memory (Brown; see at least Figure 1, column 3, lines 37-50);

wherein said means for retrievably storing data is random-access-memory (Brown; see at least Figure 1, column 3, lines 37-50);

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wherein said means for retrievably storing data is a data storage medium (reads on data hard drive) (Brown; see at least Figure 2, column 4, lines 34-47);

wherein said means for retrievably storing data further comprises categorical data of user preparation preferences (reads on user-created recipe data) (Brown, column 4, line 60 to column 5, line 5, column 9, lines 41-53); and

wherein said means for inputting data is a stylus, a well-known input device for inputting data into a personal digital assistant (Brown; column 3, lines 23-36).

9. Claims 15, 18-23, 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mansfield et al, U.S. Patent Number 5, 819, 735 as applied to claim 1 above, and further in view of Diaz et al, U.S. Patent Number 5, 890, 128.

(A) As per claim 15, Mansfield teaches a device as analyzed and discussed in claim 1 above.

Mansfield fails to explicitly disclose wherein said means for retrievably storing data further comprises nutritional data for franchise food items.

However, the above features are well-known in the art, as evidenced by Diaz.

In particular, Diaz teaches a device wherein said means for retrievably storing data further comprises nutritional data for franchise food items (Diaz, column 25, line 55 to column 26, line 20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Mansfield to include wherein said means for retrievably storing data further comprises nutritional data for franchise food items, as taught by Diaz, with

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the motivations of providing a personalized hand held computer with an extensive list of foods and their respective calorie and fat content for review in deciding daily diet or for entry before or after consumption and an easy to use retrieval means to present the user's daily and historical caloric input, fat input and caloric output as well as corresponding targets on a display means on demand (Diaz; column 4, lines 28-32, column 5, line 52 to column 7, line 41).

(B) As per claims 18-23, 27-28, Mansfield and Diaz teach a device as discussed above

further comprising user stored personal health information (Diaz; see at least Abstract, column 5, line 52 to column 7, line 50, column 13, lines 19-46);

wherein said user stored personal health information pertains to diabetes (Diaz; see at least Abstract, column 5, line 52 to column 7, line 50, column 13, lines 19-46);

wherein said user stored personal health information pertains to high blood pressure (Diaz; see at least Abstract, column 5, line 52 to column 7, line 50, column 13, lines 19-46);

wherein said user stored personal health information pertains to heart disease (Diaz; see at least Abstract, column 5, line 52 to column 7, line 50, column 13, lines 19-46);

further comprising a user-selectable audible signal (Diaz; see at least Abstract, Table 1-1 (column 3, lines 39 and following), column 5, line 52 to column 7, line 50, column 13, lines 19-46);

wherein said audible signal is activated in response to the exceeding of a maximum acceptable intake level for said specifically managed dietary need (Diaz; see at least Abstract,

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Table 1-1 (column 3, lines 39 and following), column 5, line 52 to column 7, line 50, column 13, lines 19-46);

wherein said portable data processing platform is a calculator (Diaz, Abstract, column 5, lines 1-39); and

wherein said portable data processing platform is a wrist worn computer (Diaz; column 26, lines 20-29).

10. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mansfield et al, U.S. Patent Number 5, 819, 735 and Diaz et al, U.S. Patent Number 5, 890, 128 as applied to claim 22 above, and further in view of. Shepley, U.S. Patent Number 6, 024, 281

(A) As per claim 25, Mansfield and Diaz teach a device as analyzed and discussed in claims 1 and 22 above.

Mansfield and Diaz fail to explicitly disclose wherein said audible signal or warning is activated in response to allergy inducing edible.

However, the above features are well-known in the art, as evidenced by Shepley.

In particular, Shepley teaches a device wherein said audible signal or warning is activated in response to allergy inducing edible (Shepley, column 7, lines 25-34).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Mansfield and Diaz to include wherein said audible signal or warning is activated in response to allergy inducing edible, as taught by Shepley, with the motivations of providing a computerized system which can match the nutritional requirements

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and preferences of an individual with specific items of food, assisting lay individuals to make better assessments of their own nutritional status, and helping consumers to sift through possible misleading health claims, other advertising influences and complicated food label information to make a wise choice (Shepley; column2, lines 54-60, column 4, lines 12-48).

11. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mansfield et al, U.S. Patent Number 5, 819, 735 and Diaz et al, U.S. Patent Number 5, 890, 128 as applied to claim 22 above, and further in view of. Kocher, U.S. Patent Number 6, 652, 455.

(A) As per claim 26, Mansfield and Diaz teach a device as analyzed and discussed in claims 1 and 22 above.

Mansfield and Diaz fail to explicitly disclose wherein said audible signal or warning is activated in response to potentially drug-interacting edible.

However, the above features are well-known in the art, as evidenced by Kocher.

In particular, Kocher teaches a device wherein said audible signal or warning is activated in response to potentially drug-interacting edible (Kocher, Abstract, column 3, lines 6-21, 45-54, column 8, lines 54-60).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Mansfield and Diaz to include wherein said audible signal or warning is activated in response to potentially drug-interacting edible, as taught by Kocher, with the motivations of preventing fatalities by providing a device where medicine-to-medicine interactions could be indicated by scanning and using barcode information now readily available

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for inventory control by pharmacists and supermarkets and tailoring such interaction databases for an individual's specialized needs (Kocher; column 1, line 65 to column 2, line 12).

12. Claim 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mansfield et al, U.S. Patent Number 5, 819, 735 and Shepley, U.S. Patent Number 6, 024, 281 as applied to claim 29 above, and further in view of. Mault et al, U.S. Patent Number 6, 513, 532.

(A) As per claims 30-31, Mansfield and Shepley teach a device as analyzed and discussed in claim 29 above.

Mansfield and Shepley fail to explicitly disclose wherein said mobile communication device is a cellular telephone and wherein said mobile communication device is a paging device

However, the above features are well-known in the art, as evidenced by Mault.

In particular, Mault teaches a device wherein said mobile communication device is a cellular telephone and wherein said mobile communication device is a paging device (Mault, column 6, lines 46-65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Mansfield and Shepley to include wherein said mobile communication device is a cellular telephone and wherein said mobile communication device is a paging device, as taught by Mault, with the motivations of providing a combination diet and activity monitoring device designed to be worn or carried by the subject during their daily activity to allow convenient and continuous monitoring of their daily activities and dietary consumption and which preferably includes the capability to communicate with local and remote

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computers using any of a variety of wired and wireless approaches (Mault; column 3, lines 8-30, coll6, lines 30-36).

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The cited but not applied references, Mault, U.S. Patent Number 6, 478, 736, Mansfield et al, U.S. Patent Number 6, 283, 914 and the article teach the environment of portable devices and methods for delivering nutritional and health information.

Blum et al., U.S. Patent Number 4, 686, 624, teaches a portable apparatus for processing data relative to the dietetics and/or the health of a person.

Ecer, U.S. Patent Number 5, 412, 564, teaches a system and method for diet control including a bar code reader.

Mault, U.S. Patent Number 6, 478, 736, teaches an integrated calorie management system including a portable electronic device.

Mansfield et al, U.S. Patent Number 6, 283, 914 teaches a device and method for monitoring dietary intake of calories and nutrients.

Stoddard, Mari. Personal Digital Assistants Make Inroads into Health Care. Medical Library Association News website. May 2000. [Retrieved on August 23, 2004]. Retrieved from Internet. URL: <<http://www.mlanet.org/publications/mlanews/2000/maynews00.html>>.

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14. Any response to this action should be mailed to:

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After Final communications should be labeled "Box AF."
Hand-delivered responses should be brought to Crystal Park 5,
2451 Crystal Drive, Arlington, VA, Seventh Floor (Receptionist).

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalie A. Pass whose telephone number is (703) 305-3980. The examiner can normally be reached on Monday through Thursday from 9:00 AM to 6:30 PM. The examiner can also be reached on alternate Fridays.

16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached at (703) 305-9588. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 308-1113.

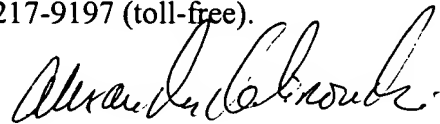
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17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Natalie A. Pass

August 23, 2004



ALEXANDER KALINOWSKI
PRIMARY EXAMINER